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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[24 August 2012]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Philippines: Obstacles concerning access to justice and protection for indigenous people

The Asian Legal Resource Centre (ALRC) welcomes the range of reports concerning the human rights of indigenous people during the upcoming 21st session of the Human Rights Council, being held from September 10 to 28, 2012. In view of the discussion on indigenous people and access to justice, to be held by the Council on September 18, the organisation wishes to highlight some specific issues of concern relating to such access to justice in the Philippines in particular. The ALRC wishes to inform the upcoming debate by providing concrete challenges that it has documented, which mirror many other challenges to access to justice for indigenous people witnessed across the Asian region.

It is important to note that despite existing legislation, the rights of indigenous people are routinely being ignored. This is only made possible by the lack of effective institutions to receive complaints, investigate allegations of violations of rights, and provide remedies. In the Philippines, such institutions are either weak or dysfunctional to the point that members of the country's population in general rarely enjoy effective access to justice, let alone indigenous people who face even greater obstacles in this regard. The ALRC therefore hopes that such fundamental questions concerning the wider institutional failings will be included in the discussions relating to indigenous people's access to justice.

The ALRC has documented cases that speak to the systemic deprivation of due process rights and protection for indigenous people under the Philippines criminal justice system. The country's 1987 Constitution and the Indigenous Peoples Rights Act (IPRA) of 1997, contain no effective or adequate clauses with regard to providing indigenous people with the required protection within criminal justice processes.

Deprivation of due process rights: While, concerning indigenous people, Chapter V, section 21 of the IPRA, stipulates that the State has "due recognition of their distinct characteristics and identity," the equal protection and the non-discrimination clause within this law has been shown to be grossly insufficient in protecting the rights of indigenous people in criminal prosecutions.

Although section 15 of the IPRA stipulates the State's recognition of indigenous people's "right to use their own commonly accepted justice systems," in situations in which the criminal prosecution one of the parties involved chooses not to submit to the indigenous system of justice, or is denied the opportunity to do so, the State has been systemically failing to uphold the indigenous person's fundamental rights to due process, as provided for under the equal protection clause concerning "rights and privileges available to every member of the society."

Take the case of Iladio Laydan, an indigenous man belonging to the Manobo tribe. Laydan is presently detained in North Cotabato Provincial Jail, Kidapawan City, following his arrest on charges of rape and homicide on September 23, 2004. For three years, Laydan was in jail without any news as to when his trial would begin. It took three years for the Regional Trial Court (RTC) 12 in Kidapawan City to conclude he had a case to answer.

Laydan was arraigned on July 24, 2007. However, when the court began to try his case on September 27, 2007, he had to appear in court without a lawyer. For almost a year, the court could not proceed with the trial because he had no lawyer. The court finally appointed a counsel-de-officio for Laydan, supposedly for one day, although this lawyer was then tasked with defending him for his entire case. The court, however, later had to replace him because of his apparent disinterest in appearing in court.

When a lawyer from the Public Attorney's Office (PAO) was appointed in July 2008, for the following two years, Laydan complained that "his lawyer has not been adequately informing and giving him regular updates about the progress of his case." It was only after the ALRC started writing appeals in October 2010, particularly to the PAO, that some adequate attention has been given to his case.

Lack of protection: Section 5 of the 1987 Constitution clearly guarantees the protection of indigenous people's ancestral lands, to "ensure their economic, social, and cultural well-being." However, in practice, when the indigenous people take action to protect their communities and ancestral lands, they face threats, attacks and extrajudicial killings. Following such violations, there is typically no adequate complaint, investigation and protection mechanism through which indigenous people can seek effective remedies. The absence of such a mechanism has been shown to place the lives, security and livelihoods of indigenous people at increased risk.

In the recent past, leaders of indigenous tribes and members of their communities who, for example, supported campaigns against intrusions by large foreign corporations in their communities, particularly those engaged in large scale mining operations, which threaten the distinct nature of their communities, including their means of subsistence, livelihood and culture, have been subjected to various forms of human rights abuse including extrajudicial killings.

Indigenous leader Jimmy Liguyon was murdered on March 5, 2012 in San Fernando, Bukidnon. Jimmy resisted the entry of a large-scale mining operation that threatened the small-scale mining operation that is the main source of income of his community. His murder is evidence of the lack of adequate and effective protection mechanisms that operate for indigenous leaders who act to protect the rights and interests of their people. He was killed despite his having made public the threats to his life that were being made by members of a paramilitary group.

This lack of protection is also evident in the case of four indigenous villagers from the Taga-Kaulo tribe - Mylen Cambo and her husband Loreto, Arnel Cambo and Reynaldo Libay - in Malalag, Davao del Sur. The Barangay (village) Intelligence Network (BIN), which is controlled by the police, started threatening them when they began filing petitions as claimants to ancestral land in their community. The BIN members labelled them as members of a rebel group, which is often a convenient excuse used to justify attacks against persons or to deny persons with protection.

The four villagers had to find sanctuary, with the help of non-governmental organisations helping them in their claims for ancestral land, in the absence of government-sponsored protection mechanism. Although the group made a complaint to the local police station to have the threats against them investigated, the police did nothing to investigate their complaints or provide them with any security and protection. They limited themselves to simply recording the complaint. This is an extremely important point, as it must be highlighted that when we speak about access to justice, the initial contact point that indigenous people, or indeed any other complainants regarding human rights violations, have with the authorities concerns the registering of complaints. It is often at this initial stage that access to justice is blocked, with the police either refusing to record complaints, or by not taking any credible action to investigate them. Without proper investigations, the process of accessing justice is effectively nipped in the bud.

In the above case concerning the four villagers, the absence of protection concerning threats and intimidation not only placed them at risk of abuse, but also prevented them from claiming their lands and pursuing criminal prosecutions against those who made threats against them. This illustrates how a lack of access to protection by the state and access to

justice delivery mechanisms places victims at risk, enables violations to take place and participates in shielding the perpetrators.

Additionally, it should be noted that human rights defenders who support and campaign for protection in favour of indigenous people, are also being targeted and are not being afforded adequate protection by the state. In the case of Francisco Canayong, a mining activist in Salcedo, Eastern Samar, who was stabbed on May 1, 2012, even after his killing, his colleagues Nenita Lacasa and Carolyn Borja were also threatened and attacked.

On May 6, 2012 at 4pm, armed men open fired at the house of Lacasa, also in Salcedo, Eastern Samar. It is alleged that Lacasa's mother died of shock in relation to the attack. On May 23, 2012 at 11pm, armed men also shot at the house of Borja. Due to a lack of protection, Borja and her family were forced into hiding. Such attacks against those who work to assist indigenous persons in accessing justice and remedies greatly undermine indigenous people's efforts in this regard.

The ALRC therefore urges the Human Rights Council to include the issues of protection of complainants and the widespread problem of the lack of credible investigations into abuses against indigenous people in its discussions concerning this issue. The ALRC welcomes the work of the Special Rapporteur on the rights of indigenous people and his report and focus on extractive industries. It also recalls the findings in the report that resulted from a visit to the Philippines by the mandate in December 2002 (E/CN.4/2003/90/Add.3), which identified concerns relating to the "slow pace of implementation of the provisions of IPRA," and a "loss of confidence among indigenous organizations in the ability or willingness of government agencies to proceed actively with its effective implementation. Then-Special Rapporteur also spoke of a human rights "protection gap" for indigenous peoples in paragraph 61 of the report, which remains as relevant today as it was a decade ago. Furthermore, the report expresses concern about "numerous reports of harassment of indigenous human rights defenders and their organizations, who, together with responsible government agencies, are the cornerstone for the protection, promotion and realization of the human rights of indigenous peoples," which also remains an issue of grave concern for the ALRC to date, as highlighted above.

It is of particular concern that many key recommendations made by the mandate following this country visit have still not been implemented by the government, including:

- Paragraph 67 (c) That the Philippine judiciary fully respect the legislative intent and spirit of IPRA and ensure that maximum favour be accorded to indigenous peoples in resolving the issue of conflicts of law between IPRA and other national legislation such as the 1995 Mining Act. Moreover, special training programmes should be designed for judges, prosecutors and legal defenders regarding indigenous peoples' rights and cultures;
- Paragraph 67 (f) That the Government of the Philippines carry out a prompt and effective investigation of the numerous human rights violations committed against indigenous peoples, which have been documented by human rights organizations and special fact-finding missions. The Special Rapporteur further urges the Government to take all necessary measures to prevent a recurrence of human rights violations;
- And, paragraph 67 (i) That maximum protection be afforded to human rights defenders in carrying out their legitimate human rights work.

With this in mind, it is important to note that without effective state institutions that can register, investigate and prosecute cases of violations against indigenous people, a climate of impunity for even the gravest of violations such as extra-judicial killings, will undermine attempts to secure from large, possibly trans-national companies an approach that involves

consultation and free, prior and informed consent, or the “protect, respect and remedy” framework, which is incorporated into the Guiding Principles on Business and Human Rights, as recalled in Special Rapporteur James Anaya’s report to this session of the Council.

Only with sufficient deterrents in place against violations of civil and political rights, will it be realistic to expect effective protection of indigenous people’s economic and cultural rights in practice. While the Philippines does have some provisions under its constitution and domestic laws that may appear to comprise such a deterrent, in reality, what is witnessed is the lack of implementation of these provisions, and the acquiescence and even complicity of state actors in violations against indigenous people. It is imperative for such elements to be included in any discussions by the Council, if these are to be relevant concerning indigenous people’s access to justice and protection with regard to extractive industries and other external forces that threaten their way of life, livelihoods and rights.
